

DATED

22 JULY

2020

(1) BDW TRADING LIMITED

AND

(2) THE COUNCIL OF THE BOROUGH OF HAVANT

AND

(3) HAMPSHIRE COUNTY COUNCIL

Supplemental Deed

Pursuant to Section 106A of the

Town and Country Planning Act 1990 (as amended)

relating to

land on the north side of Havant Road and west of Selangor Avenue, Emsworth

Devonshires Solicitors

30 Finsbury Circus

London

EC2M 7DT

Tel: 0207 628 7576

Ref: LXW\SAG5\133

THIS DEED of VARIATION is made on the 22ND of JULY 2020

BETWEEN

- (1) **BDW TRADING LIMITED** (Co. Reg. No. 3018173) of Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("**Owner**")
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Havant, Hampshire PO9 2AX ("**Council**")
- (3) **HAMPSHIRE COUNTY COUNCIL** of Civic Offices Havant, Hampshire PO9 2AX ("**County Council**")

WHEREAS

1. This Deed is supplemental to the Original Agreement.
2. The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Land (as defined in the Original Agreement) is situated and is the authority by whom the planning obligations contained in this Deed are enforceable.
3. The Owner acquired the Land by way of a transfer dated 13 February 2019 which is registered at the Land Registry under Title Number SH51444. The parties to this Deed being the parties that are interested in the land for the purposes of section 106 and 106A of the Town and Country Planning Act 1990 (**the Act**) at the date of this Deed have agreed pursuant to section 106A of the Act to vary the Original Agreement on the terms set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Deed where the context so admits all expressions shall have the meanings given to them by the Original Agreement save that the following expressions shall have the following meanings:

"the Act" means the Town and Country Planning Act 1990 (as amended)

"the Original Agreement" the agreement made under Section 106 of the Act dated 28 June 2018 and made between (1) Harriet Jane Roff Henry and James Francis Maxwell Harrison and Katherine Julia Nedham Wood (2) David John Gammans and James Francis Maxwell Harrison (3) BDW Trading Limited (4) the Council of the Borough of Havant and (5) Hampshire County Council

"the Land" has the same meaning as in the Original Agreement

2 CONSTRUCTION OF THIS DEED

- 2.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 2.2 All references in this Deed to Clauses in the Original Agreement are to Clauses within the Original Agreement.
- 2.3 Clause headings shall not affect the interpretation of this Deed.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Council or the County Council the successors to its respective statutory functions.
- 2.8 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed and shall include any subordinate legislation made under the statute or statutory provision.
- 2.9 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 2.10 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts with the intention that it binds all owners' interests in the Land and their successors in title.
- 3.2 The obligations imposed upon the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and the County Council in the manner set out in the Original Agreement.
- 3.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the District Council and County Council in the exercise of its function and its rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.

3.4 The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed.

3.5 It is hereby agreed by the parties that the variation contained at Clause 4 of this Deed shall take effect from the date of this Deed as though it had originally been contained in the Original Agreement.

4 VARIATION TO THE ORIGINAL AGREEMENT

The words "and their successors in title" contained in the definition of "Chargee" at clause 1 of the Original Agreement shall be deleted. The amended definition shall read as follows:

"means any mortgagee or chargee of the Affordable Housing Provider including any receiver or administrative receiver appointed pursuant to the Law of Property Act 1925."

5 REGISTRATION

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

6 COSTS

On execution of this Deed the Owner shall pay the Council's and County Council's reasonable legal costs in the sum of £792 and £750 respectively in connection with the negotiation and completion of this Deed.

7 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

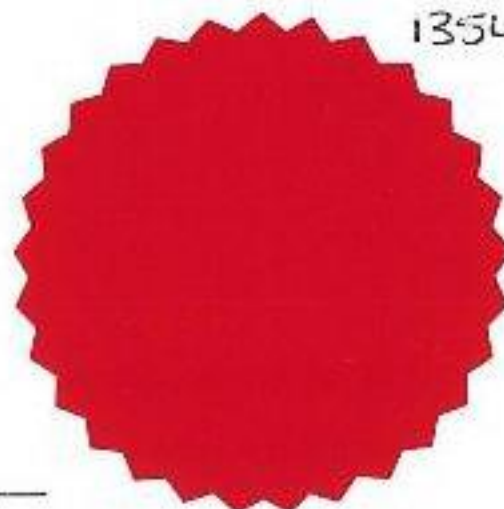
IN WITNESS whereof this instrument has been executed as a Deed the date and year first before written

EXECUTED as a DEED by affixing
THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH
OF HAVANT
In the presence of:

)
)
)
)
)



Authorised Signatory



13/5/1

EXECUTED as a DEED by affixing the
COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL
In the presence of:

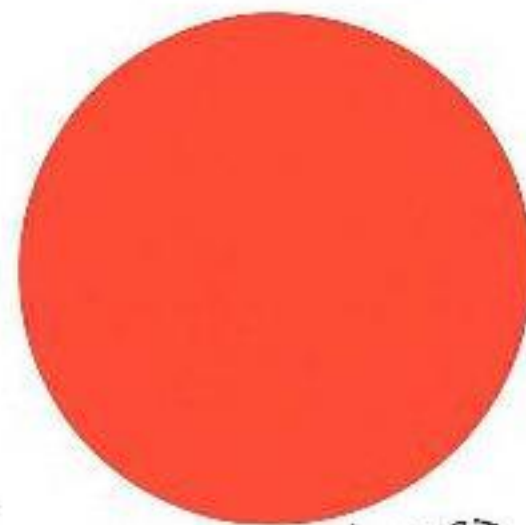


Authorised Signatory

Name

Position

PAUL HODGSON
DEPUTY HEAD OF LEGAL



37/2057

EXECUTED AS A DEED by

BDW TRADING LIMITED

acting by *Julian David Jones*

and

as the Attorneys in the name of BDW Trading Limited in exercise of the power

Conferred upon them by a Power of Attorney dated

In the presence of:

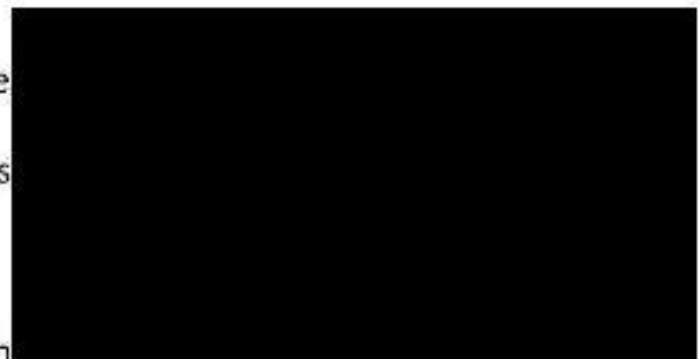


SIGNATURE OF WITNESS

Witness Name

Witness Address

Witness Occupation



SIGNATURE OF ATTORNEY



SIGNATURE OF WITNESS

Witness Name: ..

Witness Address: ..



Witness Occupation: ..